

D.P.U. 94-102-2

Investigation by the Department on its own motion, pursuant to G.L. c. 164, §§ 76 and 94G, into the relationship between the Massachusetts Electric Company and the Massachusetts Bay Transportation Authority.

APPEARANCES: Thomas G. Robinson, Esq.
 Peter G. Flynn, Esq.
 Paige Graening, Esq.
 25 Research Drive
 Westboro, Massachusetts 01582
 FOR: MASSACHUSETTS ELECTRIC

COMPANY

Respondent

Scott Harshbarger, Attorney General
By: George B. Dean
 James W. Stetson
 Kevin J. McNeely
 Assistant Attorneys General
131 Tremont Street
Boston, Massachusetts 02111

Intervenor

Wayne R. Frigard
Assistant General Counsel
800 Boylston Street
Boston, Massachusetts 02199
FOR: BOSTON EDISON COMPANY
 Intervenor

Kenneth M. Barna, Esq.
Diedre Lawrence, Esq.
Rubin & Rudman
50 Rowes Wharf
Boston, Massachusetts 02110
FOR: MASSACHUSETTS BAY

TRANSPORTATION

AUTHORITY
Intervenor

John Cope-Flanagan
Regulatory Attorney
One Main Street
P.O. Box 9150
Cambridge, Massachusetts 02142-9150
FOR: CAMBRIDGE ELECTRIC LIGHT

COMPANY

Limited Participant

Armond Cohen
Senior Attorney
62 Summer Street
Boston, Massachusetts 02140
FOR: CONSERVATION LAW

FOUNDATION

Limited Participant

Harold J. Keohane, Esq.
Robert N. Werlin, Esq.
Stephen H. August, Esq.
Keohane & Keegan
21 Custom House Street
Boston, Massachusetts 02110
FOR: NORTH EAST SOLID WASTE

COMMITTEE

Limited Participant

Stephen Klionsky
Senior Counsel
260 Franklin Street, 21st Floor
Boston, Massachusetts 02110-3179
FOR: WESTERN MASSACHUSETTS

ELECTRIC

COMPANY
Limited Participant

ORDER ON SETTLEMENT AGREEMENT
APPROVED BY THE FEDERAL ENERGY REGULATORY COMMISSION
IN DOCKET NO. ER94-129-000

I. INTRODUCTION

On May 13, 1994, the Department of Public Utilities ("Department") issued an Order opening an investigation by the Department, on its own motion, pursuant to G.L. c. 164, §§ 76 and 94G, into the relationship between the Massachusetts Electric Company ("MECo") and the Massachusetts Bay Transportation Authority ("MBTA"). Massachusetts Electric Company, D.P.U. 94-102 (1994) ("D.P.U. 94-102"). The Department's investigation was opened and has proceeded in parallel with a similar investigation by the Federal Energy Regulatory Commission ("FERC") (see FERC Docket No. ER94-129-000).¹ The FERC investigation was opened following the November 8, 1993 filing at the FERC by MECo of a proposed agreement ("Agreement") for the distribution of electricity from Boston Edison Company ("BECo") to the MBTA.

The Agreement proposed by MECo provided (1) a rate that recovered the average cost of MECo's primary distribution facilities and the cost of any new facilities necessary to serve the MBTA, (2) a rate for

¹ The Department intervened as a full party in FERC Docket No. ER94-129-000.

back-up power should BECo fail to deliver sufficient power, and (3) a "stranded cost" charge. In its filing, MECo stated that the purported stranded costs arise from the difference between MECo's marginal costs of supplying power to its customers and its embedded costs (Testimony of Richard P. Sergel, New England Electric System, MECo Exh. RPS-1, at 10-11, in FERC Docket No. ER94-129-000). According to MECo, the MBTA's switch from retail service to wheeling service would shift responsibility for those embedded costs from the MBTA to MECo's remaining customers, thus resulting in the purported stranded costs at issue (id.).

The Department opened its investigation into the prudence of MECo's relationship with the MBTA for the purpose of determining whether recovery of any stranded costs is appropriate. In its Order opening the investigation, D.P.U. 94-102, the Department stated that it would specifically investigate the following issues: (1) whether any stranded costs actually exist for MECo or its all-requirements supplier, New England Power Company ("NEP"); (2) the calculation of any such stranded costs; (3) whether, given the evident implication of Stat. 1991, c. 33, MECo reasonably could have expected the MBTA to remain a power customer for the duration of MECo's all-requirements contract with NEP; and (4) whether MECo has taken appropriate action to

mitigate any such costs. Massachusetts Electric Company, D.P.U. 94-102, at 3 (1994). The Department emphasized that its investigation would focus on the unique statutory and factual circumstances of the relationship between MECo and the MBTA. The Department stated that it did not intend to establish general policy on stranded investment in this proceeding. Id. at 4, note 2.

Following pre-filed testimony and extensive discovery at FERC, the parties obtained a suspension of the FERC schedule that provided the opportunity to negotiate a settlement of this matter. After lengthy discussions between the parties, on December 28, 1994, MECo filed a settlement agreement ("Settlement") among itself, the MBTA, and BECo in FERC Docket No. ER94-129-000. Also on December 28, 1994, MECo filed the Settlement in D.P.U. 94-102. On January 17, 1995, the FERC Staff submitted comments in support of the Settlement. Also on January 17, 1995, the Department submitted comments to FERC in support of the Settlement. On March 3, 1995, FERC approved the Settlement.

On March 15, 1995, MECo filed at the Department a copy of FERC's letter order approving the Settlement. The Settlement is not only expressly conditioned upon its acceptance in full by FERC, without change or condition, but is also expressly conditioned upon the

Department's termination of its investigation, D.P.U. 94-102, based upon FERC's approval of the Settlement as the resolution of FERC Docket No. ER94-129-000 (Settlement, Article 2.2). In addition, the Settlement provides that its approval by the Department does not constitute approval of, or precedent regarding, any principle or issue in D.P.U. 94-102 (id., Article 6.2). Finally, the Settlement places no limits on the Department's right to review future filings by MECo to implement its purchased power cost adjustment clause (id.).

Given the Department's intent to not establish general policy on stranded investment based on the outcome of this investigation, the Department finds that the economic arrangement agreed to by the parties in the Settlement is a reasonable resolution of this proceeding. Accordingly, the Department will terminate its investigation in this docket. The Department notes that specific questions on the stranded cost issue in general have been included under the umbrella of the Department's electric industry restructuring investigation, Notice of Inquiry and Order Seeking Comments on Electric Industry Restructuring, D.P.U. 95-30, at 19 (1995).

II. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Department's investigation into the

relationship between the Massachusetts Electric Company and the
Massachusetts Bay Transportation Authority be and hereby is
TERMINATED.

By Order of the Department,

Kenneth Gordon, Chairman

Mary Clark Webster,

Commissioner

Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).